

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

SULEMA GARZA,

Plaintiff,

vs.

NEW BREED LOGISTICS, INC.

Defendant.

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§
§
§
§

CIVIL ACTION NO. 4:11-cv-00161-Y

**APPENDIX IN SUPPORT OF DEFENDANT'S
MOTION TO QUASH AND FOR PROTECTION**

Pursuant to Local Rule 7.1(i), Defendant New Breed Logistics, Inc. files its Appendix in Support of Defendant's Motion to Quash and for Protection as follows:

Description	Appendix Pages
Exhibit A – Notice of Intent to Take Oral Deposition of Person Identified in Oral Depositions as Richard Valitutto	App. 1-4
Exhibit B – Affidavit of Richard Valitutto	App. 5-6
Exhibit C – Affidavit of James Valdez	App. 7-8

10881430.1

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

SULEMA GARZA, §
§
Plaintiff, § **JURY DEMAND**
§
v. § **Civil Action No. 4:11-cv-00161-Y**
§
NEW BREED LOGISTICS, INC., § **District Judge Terry R. Means**
§
Defendant. §

**NOTICE OF INTENT TO TAKE ORAL DEPOSITION
OF PERSON IDENTIFIED IN ORAL DEPOSITIONS AS
RICHARD VALITUTTO**

PLEASE TAKE NOTICE that Plaintiff Sulema Garza, through undersigned counsel, will take the oral deposition of the person identified in the oral depositions of Melissa Buntaine and Rodney Franklin as Richard Valitutto, beginning as follows:

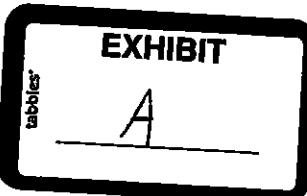
Time: **9:30 a.m. Central Standard Time**

Date: **Wednesday, August 31, 2011**

Place: **Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
8117 Preston Road, Suite 700
Dallas, Texas 75225**

Deponent: **The correct spelling of name is unknown**

**NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF PERSON
IDENTIFIED IN ORAL DEPOSITIONS AS RICHARD VALITUTTO — PAGE 1 OF 4**



The address and telephone are unknown

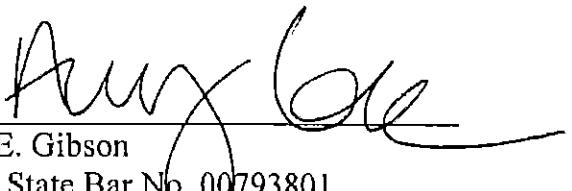
Melissa Buntaine testified during her oral deposition that Richard Valitutto made the decision to terminate Sulema Garza's employment with Defendant and that his position was General Counsel

Rodney Franklin testified during his oral deposition that Richard Valitutto was involved in the decision to suspend Sulema Garza without pay

The deposition will be taken pursuant to the Federal Rules of Civil Procedure, before an officer authorized by law to administer oaths and otherwise qualified under Federal Rule of Civil Procedure 28, and will continue as permitted under Federal Rule of Civil Procedure 30(d). You are invited to attend and examine the witness. The deposition will be recorded stenographically and by video.

**NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF PERSON
IDENTIFIED IN ORAL DEPOSITIONS AS RICHARD VALITUTTO — PAGE 2 OF 4**

Respectfully submitted,


Amy E. Gibson
Texas State Bar No. 00793801

David L. Wiley
Texas State Bar No. 24029901

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Dallas, Texas 75201-5302
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Texas State Bar No. 24001873

Chavez Law Firm
2101 Stanton Street
El Paso, Texas 79902
Telephone: (915) 351-7772
Facsimile: (915) 351-7773

ATTORNEYS FOR
SULEMA GARZA

**NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF PERSON
IDENTIFIED IN ORAL DEPOSITIONS AS RICHARD VALITUTTO — PAGE 3 OF 4**

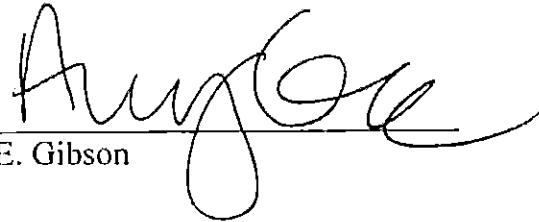
CERTIFICATE OF SERVICE

The undersigned certifies that, on August 26, 2011 before 5:00 p.m., a true copy of the foregoing **NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF PERSON IDENTIFIED IN ORAL DEPOSITIONS AS RICHARD VALITUTTO** was served on Defendant, through its attorneys of record, as follows:

VIA EMAIL [BY STIPULATION]

Mr. Michael R. Buchanan
Ms. Kristin M. Snyder
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
8117 Preston Road, Suite 700
Dallas, Texas 75225

mike.buchanan@ogletreedeakins.com
kristin.snyder@ogletreedeakins.com


Amy E. Gibson

AFFIDAVIT OF RICHARD VALITUTTO

STATE OF NORTH CAROLINA §
§
COUNTY OF GUILFORD §

BEFORE ME, the undersigned notary public, personally appeared Richard Valitutto, who is known to me, and first being duly sworn, on her oath deposed and said:

1. "My name is Richard Valitutto. I am the Vice President and General Counsel for New Breed, Inc. and all of its affiliated companies, including New Breed Logistics, Inc. (collectively, "New Breed"). New Breed's corporate offices are in High Point, North Carolina. I have served as in-house counsel for New Breed since March 1996. In this capacity, I provide legal advice concerning all legal issues, including labor and employment issues, generally and with regard to specific employee issues, complaints, Charges of Discrimination and pending lawsuits. The same is true for this lawsuit and the underlying employment decisions.

2. At New Breed, employee termination decisions in general, and in case of Sulema Garza, are/were made at the local level, but are subject to my legal review. My only involvement with regard to Garza has been as an attorney for New Breed and my personal knowledge regarding the facts of this particular case is limited to my participation in a legal review of the decision made to terminate Garza. I did not investigate the facts relating to the disciplinary actions involving Sulema Garza. I did not interview witnesses. I did not prepare disciplinary action forms nor participate in the preparation of their contents. My sole involvement with the disciplinary actions involving Sulema Garza was to provide legal review and advice for the disciplinary decisions made at the local plant level.



3. I am not available on August 31, 2011 for a deposition because I am attending a deposition in another matter in Greensboro, North Carolina that day. Furthermore, I do not have any trips to Texas planned. Requiring me to travel to Dallas, particularly on three business days notice, would cause me and my staff hardship.

THIS CONCLUDES MY AFFIDAVIT TESTIMONY."

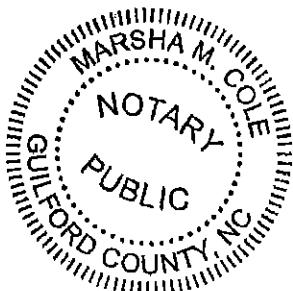
Richard Valitutto

SUBSCRIBED AND SWORN TO BEFORE ME on August 29, 2011.

Notary Public, State of North Carolina

My commission expires:

10876226.1



AFFIDAVIT OF JAMES VALDEZ

STATE OF TEXAS §

§

COUNTY OF TARRANT §

§

BEFORE ME, the undersigned notary public, personally appeared James Valdez, who is known to me, and first being duly sworn, on her oath deposed and said:

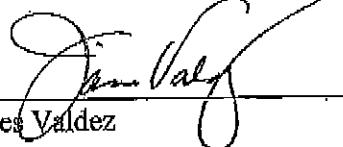
1. "My name is James Valdez. I am a Director of Human Resources for New Breed Logistics, Inc., located in Fort Worth, Texas. I have held this position since 2009.
2. At New Breed, employee discipline and termination decisions are made by the Human Resources teams at the local level at New Breed's locations and in consultation with the location's operational management. As a general rule, Human Resources Generalists will make a recommendation regarding discipline or termination based on facts known and gathered and that decision is reviewed by the Human Resources Manager and/or Human Resources Director. Disciplinary decisions are approved at the HR Manager/Director level. However, New Breed's Human Resources Managers and/or Directors consult with the General Counsel in certain disciplinary instances, and in all terminations, for legal review prior to implementing the decision made at the local plant level. When consulting with the Company's General Counsel, the expectation and belief of the local HR staff is that we are receiving legal advice from the General Counsel.
3. I have reviewed the documentation related to Sulema Garza's disciplinary actions. Based on my review of these documents, the procedure outlined above was followed with respect to Sulema Garza. The disciplinary and termination decisions were made by the local HR team at the Fort Worth facility where Garza worked.

EXHIBIT

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THIS CONCLUDES MY AFFIDAVIT TESTIMONY."


James Valdez

SUBSCRIBED AND SWORN TO BEFORE ME on August 29, 2011.


Cindy Musser
Notary Public, State of Texas

My commission expires:

2-13-2012



10878861.1